IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WP(C).No. 29599 of 2003(W)

PETITIONER:

LEELAMMA JOHN,
H.S.A. (PHYSICAL SCIENCE), GOVT.HIGHER SECONDARY SCHOOL, MANANTHAVADY, WANAYAD DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
   TRIVANDRUM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
   THIRUVANANTHAPURAM.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   WAYANAD AT KALPETTA.

4. **THE KERALA PUBLIC SERVICE COMMISSION,**
   PATTOM, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

5. **SMT.V.KRISHNAKUMARI,**
   HEADMISTRESS, G.H.S. NEERVARAM, PANAMARAM VILLAGE,
   MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS

P1 **TRUE COPY OF THE WRITTEN DATAS FURNISHED BY THE PETITIONER.**

P2 **TRUE COPY OF THE SENIORITY LIST OF HSA'S .**

P3 **TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER TO R2**

P4 **TRUE COPY OF THE REPLY ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

P5 **TRUE COPY OF THE CERTIFICATE ISSUED BY THE FOURTH RESPONDENT FOR PASSING THE ACCOUNT TEST LOWER.**

P6 **TRUE COPY OF THE CERTIFICATE ISSUED BY THE FOURTH RESPONDENT FOR PASSING THE TEST IN KER.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No. 29599 OF 2003

Dated this the 11th day of December,2006.

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as H.S.A. (Physical Science) on 3-03-1978 in the Government High School, Ramanthali in Kannur District. During the year 1986, petitioner applied for inter-district transfer to Wayanad district. She joined duty in Wayanad district with effect from 15-10-1986. According to her, district of Kannur and Wayanad are in the same zone and her seniority ought not have been effected at that time. Therefore, she was entitled to retain her original seniority from 3-3-1978 for all practical purposes such as pay, grade promotion and appointment to the higher post. Seniority list for the period from 01-01-1971 to 31-12-1980 was prepared. Service details were called for. Petitioner furnished Ext.P1. Ext.P2 is the provisional seniority list of H.S.A's for the period from 1-1-1978 to 31-12-1978.

2. Petitioner preferred Ext.P3 representation as petitioner's name was not included. Ext.P4 is the reply given to the representation of the petitioner. It is stated that the reason for

omitting her name in the state wise seniority list is that the seniority in respect of those who have secured inter-district transfer is as per Rule 27 of K.S.& S.S.R. Ext.P5 is the certificate for passing the account test lower. Ext.P6 would show that she has passed the test in Kerala Education Act and Rules. .

3. Petitioner challenges Ext.P4. She seeks to have Ext.P2 re-cast. Learned counsel for the petitioner Shri.Abraham Mathew relies on the judgment of the Full Bench in **Sasidharan Nair v. State of Kerala** (2003 ILR 161). There, the Full Bench was considering the effect of transfer of a teacher from one school to another under different management. Rule 44 A of Chapter XIV A of K.E.R. inter-alia provides that for the appointment to the post of Headmaster, the High School Assistant should have a minimum service of 12 years. It should be continuous, it should be as a graduate H.S.A and the candidate should have passed the prescribed test. A question which therefore arose was whether the service should be in one unit or the same school. The court took the view following the decision of the Apex court in **Union of India v. C.N.Ponnappan** (AIR 1996 SC 764) that service of a teacher in High School as referred to in Explanation to Rule 44 (A) is not confined to one school only. Therefore, the court took up the view that service rendered by a teacher in different school

can be combined for determining the eligibility for promotion to the post of Headmaster.

4. The case of the respondent is that the said decision was rendered in the context of provisions of Chapter XIV A of K.E.R. and as far as the petitioner's case is concerned it falls be decided with reference to the specific provision in the K.S & S.S.R. Petitioner is a person who voluntarily took a inter-district transfer subject to the condition that petitioner will forgo her right of seniority based on her original appointment in Kannur district and she agreed to rank at the bottom seniority with reference to the date of joining in the year 1986. This is not a case where the question arises as to whether her experience or service rendered prior to her inter-district transfer is to be considered for reckoning the period of service for appointment. There is no such case that such a requirement is there. What is involved is the correctness of Ext.P4 rejecting the objections to the provisional seniority list. Ext.P2 provisional seniority list is based on the principle that person who had taken inter-district transfer will loose the seniority based on the original advice and appointment in the original district. I do not think that any exception can be taken to the said principle. Petitioner cannot be permitted to seek to retain the benefit of seniority which she had obtained originally in Kannur

district in view of the undisputed fact that she applied for inter-district transfer of her own volition agreeing to loose the benefit of seniority in Kannur district.

5. In such circumstances she can claim rights based on her position as to seniority which she has in the Wayanad district with reference to the date of joining in the year 1986.

6. Petitioner also rely on the decision of the Apex court in **Scientific Advisor to Raksha Mantri and another v. V.M. Joseph** (1998 (5) SCC 305). That again was a case where promotion was denied to the petitioner therein on the ground that as he had completed three years of regular service only on 07-06-1980, he could not be promoted earlier than in 1980. The court took note that the appellant has excluded the regular service rendered in Pune as Store Keeper prior to his transfer agreeing to be placed at bottom seniority. In the said context relying on the earlier decision of the court in Union of India v. C.N.Ponnappan, the court took the view that the service rendered by the respondent in the earlier place could not be excluded towards experience and eligibility for promotion. Learned counsel for the petitioner also points out that for promotion to the post of Headmaster, the state is the unit. But I would think that the said fact cannot have any impact on the question of title to promotion

with reference to the criteria of seniority and when criteria of seniority is to be employed, it is to be considered as to whether the petitioner is senior enough for promotion during the period in question. It is in the context of that question that the effect of inter-district transfer falls to be considered. When it is so considered, it cannot be in the region of doubt that petitioner having lost the seniority by virtue of inter-district transfer, she cannot lay a claim for promotion with reference to the seniority which undoubtedly she enjoyed on the basis of P.S.C. advice,but which she admittedly has given up by virtue of applying for inter-district transfer and joining in the new district in the year 1986. I do not find any merit in the writ petition. Therefore, writ petition fails and it is accordingly dismissed.

K.M.JOSEPH.
JUDGE.

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